On the question of tax credits in respect of United Kingdom profits tax we agreed with the respondent's counsel that the appellant is under a misconception as to the tax credits he is entitled to against Singapore tax in respect of dividends he received from the United Kingdom. Under Article 18(2)(a) of the Avoidance of Double Taxation Agreement the giving of tax credits must be subject to the provisions of our Income Tax Act. Section 50(3) of our Act deals with such tax credits and on the facts it was clear that the Comptroller had credited the correct sum against the appellant's tax liability for the year of assessment 1966 and that the question of calculating any tax credits for profits tax did not arise at all. The appellant was unable to show how he arrived at the sum of $27.25 which he claimed should have been credited against his tax liability in respect of United Kingdom profits tax.

On the question of bank charges the appellant's argument was that he is entitled to a deduction of the bank charges incurred by him in respect of his receipt in Singapore of his United Kingdom dividends. The test is, in the words of section 14(1) of the Income Tax Act, whether the expense is "wholly and exclusively incurred . . . in the production of the income . . . ". In the appellant's case the United Kingdom dividends having been declared and the dividend warrants issued to him the bank charges were clearly not incurred in the production of the income but were incurred by him for the purpose of making available to him for his use income which he had already earned and for that reason we also found no substance in that ground of appeal.

Accordingly and for all these reasons we dismissed the appeal at the conclusion of the hearing.

Appeal dismissed.

Solicitors: *L. A. J. Smith.*

VIJAYAN v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Choor Singh and Tan Ah Tah JJ.) May 7, 1975]

[Singapore — Criminal Appeal No. 17 of 1974]

Criminal Law and Procedure — Charge of murder — Defence of grave and sudden provocation — Whether defence applicable to facts of case — Act provoked must have some reasonable relationship to the provocative act — Penal Code, s. 300, Exception 1.

Penal Code, s. 300, Exception 1 — Murder — "Grave" and "sudden" provocation.

In this case, the appellant had been convicted of murder. The only ground of appeal relied on was that the trial judges were wrong in law in finding that the defence of grave and sudden provocation could have no application to the facts of the present case.

Held, dismissing the appeal: (1) where an accused person charged with murder relies on provocation and claims the benefit of Exception 1 to section 300 of the Penal Code, the test to be applied is, whether the act or acts alleged to constitute provocation have deprived a reasonable man of his self-control and induced him to do the act which caused the death of the deceased and in applying this test it is relevant to look at and compare the act of provocation with the act of retaliation;

(2) on the evidence in this case the trial judges came to a correct finding. The provocative acts relied upon in this case were not capable of constituting provocation sufficient to reduce the appellant's crime from murder to culpable homicide not amounting to murder.

Cases referred to:-

(1) *Attorney-General for Ceylon* v. *Perera* [1953] A.C. 200.

(2) *Mancini* v. *Director of Public Prosecutions* [1942] A.C. 1.

(3) *Holmes* v. *Director of Public Prosecutions* [1946] A.C. 588.

(4) *Lee Chun-Chuen* v. *The Queen* [1963] A.C. 220.

(5) *Nanavati* v. *State of Maharashtra* A.I.R. 1962 S.C. 605.

(6) *R.* v. *Duffy* [1949] 1 All E.R. 932.

(7) *Jayasena* v. *Regina* [1970] 1 All E.R. 219.

(8) *Phillips* v. *The Queen* [1969] 2 A.C. 130.

(9) *Reg.* v. *Brown* [1972] 3 W.L.R. 12.

(10) *Reg.* v. *Walker* [1969] 1 W.L.R. 311.

COURT OF CRIMINAL APPEAL.

Datuk David Marshall for the appellant.

Tan Teow Yeow (Deputy Public Prosecutor) for the respondent.

Choor Singh J. (delivering the judgment of the Court): The appellant was convicted before the High Court consisting of two judges for the murder of a man named Murthi. We dismissed his appeal against his conviction and now proceed to give our reasons.

The only ground of appeal relied on by counsel for the appellant, accepting the trial judges were correct in accepting the evidence of an eye-witness, Subramaniam by name and in rejecting the evidence of the appellant, was that the trial judges were wrong in law in finding that the defence of grave and sudden provocation (Exception 1 to section 300 of the Penal Code) could have no application to the facts of the present case.

The appellant is a Malaysian who came to Singapore some time back on a social visit. Permission to enter Singapore on a social visit is granted by the Immigration authorities by endorsement on one's passport and is valid for only 14 days. It would appear that the appellant had contrived to remain in Singapore ever since he first came by going across the border between Singapore and Malaysia every 14 days and coming back on the same day with a fresh endorsement valid for another 14 days. A person such as the appellant who is in Singapore on a social visit is not entitled to work in Singapore without a work permit. The appellant has no such permit but has nevertheless been working in Singapore as a labourer. The relevance of these facts will appear when the issue of provocation is considered.

Subramaniam, a close friend of the deceased, gave evidence that a few days before the deceased was killed he enlisted the help of the deceased to bring about a settlement of whatever disputes there were between his two room-mates and a person named Velu, a friend of the appellant. The parties to the dispute were brought together in the presence of the deceased and "his boys" on the one hand and the appellant on the other. The appellant was apparently dissatisfied with the manner in which the settlement had been negotiated and

the following day told Subramaniam that he too had a gang and was not frightened. Subramaniam said he would arrange for the deceased to meet the appellant to discuss the matter that same evening and he later told the deceased about his conversation with the appellant. The deceased agreed to try and speak with the appellant if Subramaniam could arrange for them to meet. However no meeting took place on that day.

A few days later, on December 21, 1973, at about 8 p.m. Subramaniam met the deceased at a bar. The deceased was in a quarrelsome mood having drunk too much and expressed a desire to meet the appellant that same evening. After they had a meal the deceased and Subramaniam walked in the direction of the house, No. 60 Weld Road, in which the appellant had a room. They met a person by the name of Jabbar, a friend of the appellant, who shared the room with the appellant and another and the deceased asked Jabbar to lead him to the appellant's room.

The appellant's room is on one side of a corridor which leads to the kitchen of No. 60 Weld Road. That evening the corridor was lighted and was empty except for the presence of the appellant and his lover, a girl named Letchmy, both of whom were seated outside the appellant's room.

Jabbar led the deceased and Subramaniam to the corridor and there the deceased approached the appellant and stretching out his hand in friendship said that he wanted to speak to him about an important matter and asked him to go out of the premises. Deceased spoke to the appellant in a friendly manner and both shook hands. Deceased then asked the appellant who the girl was and when the appellant replied that she was his lover the deceased shouted, "Who has given houses to Malaysians?" Being drunk the deceased started shouting aggressively, "Come out. I'll fight with you.". Subramaniam advised the deceased that it was not right to shout and took the deceased out to the front door leading to the street. While on the five-foot-way facing the street the deceased kept shouting, "Come out and fight.". Subramaniam stated that suddenly he saw the appellant coming out from inside the house. Subramaniam saw the appellant catch the deceased from behind by his trousers just below his waist. Subramaniam then shouted to the deceased to run. The deceased staggered a little and ran to the road in front of the house. He could not run very fast. He was more or less staggering and running and was being chased by the appellant. Subramaniam remained standing on the five-foot-way of the house. The deceased staggered and fell on the road about 40 yards from the house. When the deceased fell down, the appellant was about six feet from him. The appellant reached the legs of the deceased who started kicking though not with any great force. After he had kicked twice or thrice the appellant caught hold of his legs and pressed them down. It appeared to Subramaniam that the appellant took out a weapon from his person and stabbed downwards somewhere between the deceased's neck and stomach. Subramaniam stated that the appellant stood across the deceased's legs, stooped downwards and stabbed the deceased who was lying on the road. On seeing this Subramaniam became frightened and ran away from the scene.

Jabbar was another eye-witness who saw the appellant stab the deceased. He stated that he saw the appellant stab the deceased on the left side of the body near the top of his pelvis. He stated further that he saw the appellant turn the deceased over as he was lying on his back face upwards. According to Jabbar, after stabbing the deceased the appellant stood up and remained there uttering abuse at the deceased. The appellant was still standing there when the police arrived at the scene. There was yet another eye-witness who saw the appellant stabbing the deceased. He was one Rengasamy who ran a coffee stall adjoining the premises in which the appellant lived. He stated that he saw the appellant chasing a man in front of him. He could not see the appellant holding anything in his hand from where he was but he saw the appellant catch the deceased after he fell on the road and saw him stab the deceased two or three times. He stated that when the appellant was making stabbing movements on the fallen man he could not see anyone else in the immediate vicinity.

When a police constable arrived at the scene he saw the deceased lying dead on the road in a pool of blood with the appellant standing next to him holding a blood-stained chopper.

An autopsy performed on the body of the deceased revealed that apart from eight superficial cuts and abrasions the deceased had six serious stab wounds: —

1. Stab wound at the back of the right side of the neck 3.5 cm. in length with clean cut edges, one sharp and one rounded end, penetrated 8 cm. deep into the neck and cut the C7 cervical vertebra on the right side.
2. A large stab wound at the centre of the chest slightly to the left side 7 cm. long with clean cut edges and sharp ends. It cut through the 3rd to 5th costal cartileges on the left side and entered into the chest cavity splitting the pericardium and made a cut on the anterior surface of the right ventricle 4 cm. in length.
3. Stab wound at the right side of the chest 2 cm. long with clean cut edges, one sharp and one rounded end, penetrated into the chest cavity at the 9th intercostal space and with a cut on the lower lobe of the right lung. Total depth 5 cm.
4. Stab wound 3 cm. in length with clean edges, one sharp and one rounded end, above the left side of the umbillicus and penetrated into the abdominal cavity. No vital structures involved.
5. Stab wound on the left loin 2 cm. in length with clean cut edges, sharp at one end and rounded at the other. There was a loop of intestines hanging outside this stab wound and the part of the intestines was slightly gangrenous.
6. Stab wound at the left side of the back 2 cm. with clean edges, one sharp and one rounded end, penetrated into the left chest cavity but did not hit the lung.

The pathologist explained that the second wound was the fatal wound; that considerable force must have been used to inflict it and that a person with such a wound would die within ten to fifteen minutes. According to the pathologist, the third wound was also sufficient to cause death in the ordinary course of nature if untreated.

The appellant's defence was that it was the deceased who had first attacked him with the chopper and that he had acted in self defence. Counsel for the appellant conceded that the appellant's version having been rejected by the trial judges, the question of pro-

vocation must be decided on the evidence tendered by the prosecution. He contended that there was evidence of provocative acts sufficient to reduce the offence from murder to the lesser offence of culpable homicide not amounting to murder.

The question that falls for decision in this appeal is one which, in our opinion depends entirely on the true construction of Exception 1 of section 300 of the Penal Code of Singapore which provides as follows: —

"*Exception 1* — Culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above Exception is subject to the following provisos:—

(a) that the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person;

(b) that the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant;

(c) that the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation — Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder, is a question of fact."

This Exception defines the limits within which provocation mitigates the criminal liability of a person otherwise guilty of murder.

This Exception is identical in terms with Exception 1 of section 294 of the Ceylon Penal Code which was considered by the Privy Council in *Attorney-General for Ceylon* v. *Perera*,[1] and is also identical with Exception 1 of section 300 of the Indian Penal Code.

The meaning of this statutory provocation, as laid down by the Privy Council in *Perera's* case, was strongly criticised by counsel for the appellant. It was contended that the Privy Council had wrongly introduced the "reasonable relationship" rule into statutory provocation. Counsel submitted that the requirement that the retaliation in consequence of the provocation must be reasonably commensurate with the degree of provocation offered was illogical, unjust and totally irrelevant in considering provocation.

Exception 1 of section 300 is quite obviously based on the common law of England and before considering the decision in *Perera's* case it is desirable to examine the English cases which define provocation.

The common law concept of provocation was enunciated by Viscount Simon L.C. in *Mancini* v. *Director of Public Prosecutions*,[2] in his speech, at page 9: —

"It is not all provocation that will reduce the crime of murder to manslaughter. Provocation, to have that result, must be such as temporarily deprive the person provoked of the power of self control, as the result of which he commits the unlawful act which causes death. 'In deciding the question whether this was or was not the case regard must be had to the nature of the act by which the offender causes death, to the time which elapsed between the provocation and the act which caused death, to the offender's conduct during that interval, and to all other circumstances tending to show the state of his mind.' *Stephen's* Digest of the Criminal Law, art. 317. The test to be applied is that of the effect of the provocation on a reasonable man, as was laid down by the Court of Criminal Appeal in *Rex* v. *Lesbini* [1914] 3 K.B. 1110 so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did. In applying the test, it is of particular importance (a) to consider whether a sufficient interval has elaspsed since the provocation to allow a reasonable man time to cool, and (b) to take into account the instrument with which the homicide was effected, for to retort, in the heat of passion induced by provocation, by a simple blow, is a very different thing from making use of a deadly instrument like a concealed dagger. In short, the mode of resentment must bear a reasonable relationship to the provocation if the offence is to be reduced to manslaughter...."

Four years later, in *Holmes* v. *Director of Public Prosecutions*,[3] Viscount Simon threw further light on the common law doctrine of provocation, in his speech, at page 597: —

"In dealing with provocation as justifying the view that the crime may be manslaughter and not murder, a distinction must be made between what the judge lays down as matter of law, and what the jury decides as matter of fact. If there is no sufficient material, even on a view of the evidence most favourable to the accused, for a jury (which means a reasonable jury) to form the view that a reasonable person so provoked could be driven, through transport of passion and loss of self-control, to the degree and method and continuance of violence which produces the death it is the duty of the judge as matter of law to direct the jury that the evidence does not support a verdict of manslaughter. If, on the other hand, the case is one in which the view might fairly be taken (a) that a reasonable person, in consequence of the provocation received, might be so rendered subject to passion or loss of control as to be led to use the violence with fatal results, and (b) that the accused was in fact acting under the stress of such provocation, then it is for the jury to determine whether on its view of the facts manslaughter or murder is the appropriate verdict. It is hardly necessary to lay emphasis on the importance of considering, where the homicide does not follow immediately upon the provocation, whether the accused, if acting as a reasonable man, had 'time to cool'. The distinction, therefore, is between asking 'Could the evidence support the view that the provocation was sufficient to lead a reasonable person to do what the accused did?' (which is for the judge to rule), and, assuming that the judge's ruling is in the affirmative, asking the jury, 'Do you consider that, on the facts as you find them from the evidence, the provocation was in fact enough to lead a reasonable person to do what the accused did?' and, if so, 'Did the accused act under the stress of such provocation?"

In *Lee Chun-Chuen* v. *The Queen*,[4] which was an appeal from the Supreme Court of Hongkong, Lord Devlin who delivered the judgment of the Board, explained the common law concept of provocation, at page 231, as follows: —

"Provocation in law consists mainly of three elements — the act of provocation, the loss of self-control, both actual and reasonable, and the retaliation proportionate to the provocation. The defence cannot require the issue to be left to the jury unless there has been produced a credible narrative of events suggesting the presence of these three elements. They are not detached. Their relationship to each other — particularly in point of time, whether there was time for passion to cool — is of the first importance. The point that their lordships wish to emphasise is that provocation in law means something more than a provocative incident. That is only one of the constituent elements. The appellant's submission that if there is evidence of an act of provocation, that of itself raises a jury question, is not correct. It cannot stand with the statement of the law which their lordships have quoted from *Holmes* v. *Director of Public Prosecutions* [1946] A.C. 588. In *Mancini* v. *Director of Public Prosecutions* [1942] A.C. 1 the House of Lords proceeded on the basis that there was an act of provocation — the aiming of a blow with the fist — but held that it was right not to leave the issue to the jury because the use of a dagger in reply was disproportionate."

It will be seen that whatever criticism may be made of it, the fact that the act provoked must bear some reasonable relationship to the provocative act is now authoritatively recognised as part of the common

law of England. Where the retaliation in response to some slight provocation is outrageous in its nature and beyond all proportion to the offence given it is evidence of what the law denominates as malice and therefore the crime will amount to murder, notwithstanding such provocation.

In *Perera's* case, Lord Goddard, who delivered the judgment of the Board, said, at page 201: —

"... The ground on which the appeal was argued before the Court of Criminal Appeal was that the trial judge had wrongly directed the jury that a defence of provocation could not succeed and the charge of murder could not therefore be reduced to culpable homicide not amounting to murder unless the action of the respondent taken by him in consequence of the provocation was reasonably commensurate with the degree of provocation offered to him. The Court of Criminal Appeal held that this was a misdirection, and it is against that decision that this appeal is brought....

xxx xxx xxx xxx

Turning now to the facts, it is enough to say that the case made at the trial was that ill-feeling had long existed between the respondent and the family of the deceased, and that on the day in question he shot and killed the woman Kumarihamy and other members of her family, and it was sought to reduce the crime from murder to manslaughter by reason of certain provocation consisting of stone-throwing by the women's family, and threats uttered by them, so that, the respondent said he was suddenly provoked and at the same time felt serious danger to his life and that he did not know what happened as he had lost control over himself. It is unnecessary for the purposes of this appeal further to set out the facts, as the only question raised was with regard to the direction which the trial judge gave and which has already been stated.

xxx xxx xxx xxx

To reduce the crime from murder to manslaughter the offender must show, first, that he was deprived of self-control, and secondly, that deprivation was caused by provocation which in the opinion of a jury was both grave and sudden. In directing the jury that they must ask themselves whether the kind of provocation actually given was the kind of provocation which they as reasonable men would regard as sufficiently grave to mitigate the actual killing of the woman, in the opinion of their Lordships the judge was merely directing the jury as to how they should determine whether the provocation was grave. The words 'grave' and 'sudden' are both of them relative terms and must at least to a great extent be decided by comparing the nature of the provocation with that of the retaliatory act. It is impossible to determine whether the provocation was grave without at the same time considering the act which resulted from the provocation, otherwise some quite minor or trivial provocation might be thought to excuse the use of a deadly weapon. A blow with a fist or with the open hand is undoubtedly provocation, and provocation which may cause the sufferer to lose a degree of control, but will not excuse the use of a deadly weapon, and in the opinion of their Lordships it is quite wrong to say that because the Code does not in so many words say that the retaliation must bear some relation to the provocation it is true to say that the contrary is the case.

Their Lordships, having considered with care the whole of the summing-up, are of opinion that it was quite impeccable and was in accordance with the law of Ceylon, and for these reasons have tendered to Her Majesty, their humble advice that the appeal should be allowed."

In *Nanavati* v. *State of Maharashtra*,[5] the Supreme Court of India, after considering the doctrine of provocation as laid down in *Mancini* v. *Director of Public Prosecutions; Holmes* v. *Director of Public Prosecutions* and *R.* v. *Duffy*,[6] examined the Indian decisions on the subject and summarised the Indian law as follows: —

(1) The test of "grave" and "sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control.

(2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to section 300 of the Penal Code.

(3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence; and

(4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

Perera's case was not referred to by the Supreme Court of India probably because the appeal turned on the issue of loss of self-control. The facts were that the wife of the appellant confessed to him that she had illicit intimacy with the deceased who was not present. The appellant, some three hours later, went to the house of the deceased and shot him dead. The Supreme Court held that —

"between the time of the wife's confession of adultery and the time of the murder, three hours had lapsed and there was sufficient time for the accused to regain self-control even if he had not regained it earlier. His conduct clearly showed that the murder was a deliberate and calculated one."

In the present case counsel for the appellant's main criticism is of what is now known as the "reasonable relationship" rule which he says has no validity. He has used strong language to criticise this element which is always taken into consideration in applying the test whether a reasonable person would have on the provocation offered lost his self-control and acted as the accused did. He described it, as stated earlier, as illogical, unjust and totally irrelevant in considering the issue of provocation.

Counsel submitted that the root principle of the doctrine of provocation is that a killing in the heat of blood did not deserve the supreme penalty and that a radical change of opinion has occurred since the judgment of the House of Lords in *Mancini*. It was submitted that the requirement of a reasonable relationship between the act of provocation and the act of retaliation was illogical and unjust because if the provocation was in the circumstances of the case sufficiently grave and sudden to cause the appellant to lose self-control, it did not matter in what form or manner he retaliated. Having lost control of himself he could not be expected to control his retaliation. Counsel argued that the severity of the retaliation was merely evidence of the loss of self-control.

Finally, it was submitted that in any event, the "reasonable relationship" rule was illogical and contrary to modern thinking and should be rejected.

In our opinion although Exception 1 of section 300 of the Penal Code does not apparently state in full the common law as expounded in *Mancini* and *Lee Chun-Chuen*, that does not mean that provocation under this Exception and common law provocation

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involve widely different concepts. They do not. In our opinion, in enacting Exception 1 of section 300 the Legislature has not limited the common law meaning of provocation. The test to be applied to ascertain the sufficiency of provocation under our law is the same as that applied under the common law. In every case it depends on the effect of the provocative act on the ordinary man, that is, an ordinary reasonable man belonging to the same class of society as the accused. That is the test which must be applied to ascertain whether or not there was provocation within the meaning of Exception 1 of section 300 of the Penal Code. Whether an act which caused death was done in the heat of passion caused by grave and sudden provocation depends in our opinion on whether the provocative act was such as was likely to cause a reasonable man to lose his self-control and to do the act in question.

It is true that Exception 1 of section 300 which defines provocation does not do so by reference to any comparison between the provocative act and the retaliatory act. But as the test of the sufficiency of the provocation, namely, whether or not the provocation offered would have induced a reasonable man to do what the accused did, cannot be applied without comparing the provocation with the retaliation, the element of "reasonable relationship" is an essential factor to be taken into consideration.

In our judgment, under our law, where an accused person charged with murder relies on provocation and claims the benefit of Exception 1 of section 300, the test to be applied is, would the act or acts alleged to constitute provocation have deprived a reasonable man of his self-control and induced him to do the act which caused the death of the deceased and in applying this test it is relevant to look at and compare the act of provocation with the act of retaliation.

To put it in another way, it must be shown distinctly not only that the act which caused death was done under the influence of some feeling which took away from the accused all control over his actions, but also that that feeling had an adequate cause and here again it is relevant to compare the provocative act with the act of retaliation. If it can reasonably be said that these two acts more or less balance each other in the sense that the proved provocation could have driven a reasonable person to do what the accused did, then he is entitled to the benefit of this Exception. On the other hand, if the act of retaliation is entirely out of proportion to the provocation offered, the plea of grave and sudden provocation fails. It is needless to add that the matter must be considered objectively and that the burden is on the accused to establish provocation on a balance of probabilities. *Jayasena* v. *Regina*.[7]

In England, even after the enactment of section 3 of the Homicide Act, 1957 which now defines provocation in precise terms, it is not wrong for a jury to compare the retaliation with the provocation offered in order to decide whether a reasonable man under such provocation would have lost his self-control and acted as the accused did. It is true that in cases such as *Phillips* v. *The Queen*,[8] and *Regina* v. *Brown*,[9] the court has cautioned that "it would be better not to use the precise words of Viscount Simon unless it is made clear that it is not a rule of law which the jury have to follow." But that does not mean that the element of reasonable relationship should be ignored altogether or that it is wrong for a jury to compare the retaliation with the provocation. Such comparison is a mere guide to one of the considerations which a jury has to take into account on the issue of provocation, namely, whether a reasonable man would have lost his self-control and acted as the accused did. As was pointed out by Fenton Atkinson L.J. in *Reg.* v. *Walker*,[10] "plainly one vital element for the jury's consideration in all these cases is the proportion between the provocation and the retaliation." Fenton Atkinson L.J. then went on to quote what Lord Devlin said in *Lee Chun-Chuen* v. *The Queen, supra*, and he continued: —

> "It has never been the law that the man who completely loses his temper on some trivial provocation and reacts with gross and savage violence which kills his victim can hope for a jury to find a verdict of manslaughter on the ground of provocation."

In *Regina* v. *Brown, supra*, the Court of Appeal said, at page 15: —

> "In the view of this court, when considering whether the provocation was enough to make a reasonable man do as the accused did it is relevant for a jury to compare the words or acts or both of these things which are put forward as provocation with the nature of the act committed by the accused. It may be for instance that a jury might find that the accused's act was so disproportionate to the provocation alleged that no reasonable man would have so acted. We think therefore that a jury should be instructed to consider the relationship of the accused's acts to the provocation when asking themselves the question 'Was it enough to make a reasonable man do as he did?' "

In that case the trial judge had directed the jury as follows: —

> "Members of the jury, it is often said, and rightly said, that in considering an issue of provocation you must look for some proportion between the acts which provoke and the reaction which resulted from the provocation. It may be that one set of circumstances could amount to provocation, to provoke a man to strike his wife a blow with his fist which might cause her death, or to grab her around the throat or throttle her in a moment of anger. But where, as here, a lethal weapon in the form of a razor has been used, and used in acts which objectively regarded must have been, you may think, of great savagery, then you may think it would not be right to say that a reasonable person would have been provoked to that reaction unless the provocation was very grave."

The Court of Appeal held that this direction was "unobjectionable on any view." It will be seen that in England even after provocation has been defined by statute, the concept of "reasonable relationship" is a relevant factor to be taken into consideration on the issue of provocation. We are not aware of any reported decision in which it has been rejected as irrelevant.

In any event, whatever the law of England may be, the decision in *Perera's* case is binding on this court. In our opinion it is also, with respect, entirely correct.

In the present case, counsel for the appellant submitted that the trial judges should have considered the issue of provocation in the light of the appellant's back-ground, namely, that he was a Malaysian who had no right to live and work in Singapore; that he was living in fear that if this fact was discovered by

the authorities he would be thrown out of Singapore; that on the night in question the deceased referred to this very sensitive subject when he asked aggressively, "Who has given houses to Malaysians?"; and that when he followed it up by challenging the appellant to a fight, the appellant completely lost his self-control and attacked the deceased. Counsel contended that all this closely following the previous ill-feeling between them, was sufficient provocation to reduce the offence from murder to culpable homicide not amounting to murder. It is pertinent to observe that the appellant, when giving evidence, did not say that he lost his self-control because of the abovementioned provocation by the deceased.

Although the defence raised at the trial was that of self-defence, it is clear from their judgment that the trial judges had the issue of provocation in mind when they found that "anything done by the deceased in the corridor did not raise the defence of either grave and sudden provocation or any of the other exceptions to section 300 of the Penal Code." In our judgment, on the evidence in this case, the trial judges came to a correct finding. The provocative acts relied upon in this case to constitute grave and sudden provocation within the meaning of Exception 1 of section 300 were not capable of constituting provocation sufficient to reduce the appellant's crime from murder to culpable homicide not amounting to murder. On the evidence, we cannot see how any reasonable jury, properly directed, could have found that the provocation proved might have induced a reasonable man to act as the appellant did. In our judgment, a reasonable jury would have found the appellant guilty of the crime of murder notwithstanding the proved provocation. Accordingly, the appellant's appeal against his conviction was dismissed.

Appeal dismissed.

Solicitors: *David Marshall.*

TAN AH LENG v. THE AMERICAN INSURANCE COMPANY

[O.C.J. (Wee Chong Jin C.J.) February 25, 1975]
[Singapore — Civil Suit No. 1142 of 1973]

Insurance — Motor insurance — Policy of insurance — Limitation clause as to use of vehicle — Whether motor vehicle was used for hire or reward and not in accordance with description of risk covered by policy of insurance.

The defendants had refused to pay the plaintiff the amount of the judgment and costs awarded to him as a result of an accident involving the motor car of one Yeo, which was insured with the defendants on the ground that at the material time the use of the insured motor car was not within the limitation clause and they were not on risk therefor. The plaintiff brought an action against the insurers for the amount awarded. The policy of insurance contained the usual limitation to use for service, domestic and pleasure purposes and stated that the policy did not cover use for hire or reward. The evidence showed that the motor car was on its way to fetch an employee of Pan-Am World Airways under an arrangement by which the plaintiff was to provide transport to the employees of the airways to and from Singapore airport to their houses. It was contended that even if this evidence was accepted, the hiring had not commenced until the car had arrived at the employee's house; and therefore at the time of the accident the car was not being used for hire or reward.

Held: on the facts, the hiring had commenced when the car was on its way to the employee's house and it was at the time of the accident used for hire and reward and was not being used in accordance with the description of the risk covered by the policy of insurance. The plaintiff's claim must therefore be dismissed.

Case referred to:-

(1) *Safety Insurance Co. Ltd.* v. *Koh Kim Kwee* Singapore — Civil Appeal No. 41 of 1971.

CIVIL SUIT.

Chim Hou Yan for the plaintiff.

P. Selvadurai for the defendants.

Wee Chong Jin C.J.: At or about 5.45 a.m. on 19th July 1968 the plaintiff was injured at Tanglin Road by a motor car No. SK. 62 owned by one Yeo Chin Choo and driven by one Daud bin Piee, a servant of Yeo Chin Choo. The plaintiff brought an action in Suit No. 7 of 1971 in the High Court against Yeo Chin Choo for damages for personal injuries suffered as a result of the negligent driving of the said servant of Yeo Chin Choo and obtained judgment for $19,800 and costs to be taxed. The costs were subsequently taxed at $4,397.

At the date of the accident there was in force a policy of insurance issued by the defendants to Yeo Chin Choo insuring him and anyone driving on his order or with his permission in respect of any liability at law for compensation, costs and expenses which might be incurred by Yeo Chin Choo or any other person driving on his said order or with his said permission in respect of the death or bodily injury of any person caused by or arising out of the use on a road of the said motor car SK. 62, being such a liability as is required to be covered by a policy of insurance under section 4(1)(b) of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap. 88). The Schedule to the policy of insurance contained the usual limitation clause which reads: —

"Conditions as to Use:—

Use only for social, domestic and pleasure purposes and for the Insured's business. The policy does not cover use for hire or reward. . . ."

The defendants refused to pay to the plaintiff the amount of the said judgment and costs, claiming that at the material time the use of the insured motor car SK. 62 was not within the limitation clause and they were not on risk therefor. The plaintiff accordingly commenced the present action.

At the trial the defendants called as a witness one Tony Sng, an aircraft mechanic employed by Pan-Am World Airways who said that his employers provided transport for those employees who either commence or finish work between midnight and 6 a.m. at the Singapore Airport. The transport was supplied by a firm known as Airport Hire Cars. It is common ground that Yeo Chin Choo is the sole proprietor of Airport Hire Cars. Tony Sng said that on the evening of July 18, 1968 he telephoned to Airport Hire Cars and arranged for a car to call at his house in Margaret Drive at between 5 and 5.30 a.m. the next morning to take him to the Singapore Airport. However, no car turned up at his house on the morning of the July 19, and he took a taxi to his work at the Singapore Airport. From there he telephoned at roughly before